

AG Contract No. : KR04-1356TRN  
ADOT ECS File No : JPA 04-090  
Project: SR 101L Agua Fria Freeway  
Section: 67<sup>th</sup> – 59<sup>th</sup> Avenue  
(Upsizing of Wall Foundations)  
TRACS No.: H6674 01C  
Budget Source Item No.: 73305  
City of Glendale: C-5221

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF GLENDALE

THIS AGREEMENT is entered into this date 23 December, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF GLENDALE, acting by and through its MAYOR and CITY COUNCIL (the "City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The City, by permit from the State, is designing, advertising, constructing and administering a noise wall project on the State's existing Agua Fria Freeway (SR 101L) between 67<sup>th</sup> Avenue and 59<sup>th</sup> Avenue, at the City's expense. The State desires to provide funds, in a total amount not to exceed \$211,641.00, as shown on Exhibit A, attached hereto and made a part hereof, for the City to include provisions to up-size the wall design and wall foundations, in which to accommodate a future height extension without reconstructing the wall, herein collectively referred to as the "Project". The purpose of this agreement is to define each party's responsibilities for the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 27272  
Filed with the Secretary of State  
Date Filed: 12/23/04

Janice K. Brewer  
Secretary of State

By: Danny D. Greenwald

## **II. SCOPE OF WORK**

### **1. The State will:**

a. Upon execution of this Agreement and receipt of an invoice from the City, remit to the City \$211,641.00, for the cost of the Project, which includes a fixed rate of 14% for construction engineering and administration. The total amount of \$211,641.00 shall be considered full and final payment for the Project.

b. Review all contract modifications related to the wall foundation upsizing and provide comments accordingly. The State shall not be responsible for any contract modifications without prior approval.

c. Grant the City a Right-of-Way Encroachment Permit through the Phoenix District Maintenance Office, for work outside of the State's Control of Access to permit the City to perform all planned construction and maintenance of the Project.

d. Upon completion of the Project, participate in the final inspection and provide concurrence as appropriate.

e. Be responsible for the structural integrity of the Project wall.

### **2. The City will:**

a. Upon execution of this agreement, invoice the State \$211,641.00, for the fixed cost of the Project, which includes a fixed rate of 14% for construction engineering and administration. The fixed cost of \$211,641.00 shall be considered full and final payment for the Project.

b. Inform the State of any contract modifications to the Project and obtain concurrence from the State.

c. Apply for a State's Right-of-Way Encroachment Permit through the Phoenix District Maintenance Office, address provided under III 9, for the construction and maintenance of the Project. Comply with all requirements of the State's permit for the Project.

d. Include the State in final inspection and obtain State's written concurrence upon completion of the Project.

e. Should the City cancel its proposed plans for whatever reason, be responsible for all costs incurred by the State up to the time of cancellation, unless the reason for the City's cancellation is due to the State's failure to comply with its obligations herein.

f. Be responsible for the control of graffiti and painting of the Project wall/s as constructed and for any future height extension of the wall/s.

## **III. MISCELLANEOUS PROVISIONS**

1. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents employees, or volunteers.

2. This agreement shall remain in force and effect until completion of the Project and payment; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the advertisement of a construction contract, upon thirty days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, MD 616E  
Phoenix, AZ 85007

City of Glendale  
City Engineer  
5850 West Glendale Avenue  
Glendale, AZ 85301

**District Office**

Arizona Department of Transportation  
Phoenix District Maintenance Office  
2140 W. Hilton Ave  
Phoenix, AZ 85009

10. Pursuant to Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

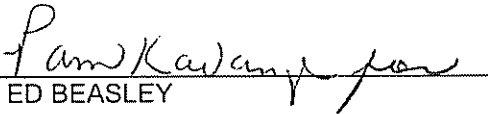
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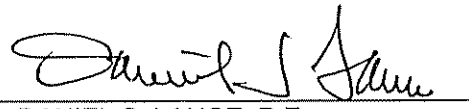
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

CITY OF GLENDALE

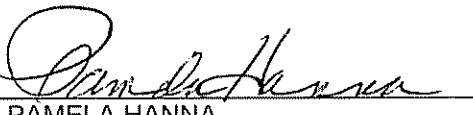
STATE OF ARIZONA

Department of Transportation

By   
ED BEASLEY  
City Manager

By   
DANIEL S. LANCE, P.E.  
Deputy State Engineer

ATTEST

By   
PAMELA HANNA  
City Clerk

# EXHIBIT A

(JPA 04-090)

## Loop 101 Wall Foundations (Up-Sizing) 67<sup>th</sup> Ave.-59<sup>th</sup> Ave.

### PROJECT COST ESTIMATE

Costs for foundation Up-Sizing

<u>ITEM</u>	<u>ESTIMATED COST</u>
CONSTRUCTION Costs:	
Additional Steel	\$ 45,624.00
Additional Footing Concrete (640 X \$200)	\$ 128,000.00
Additional Structural Excavation	\$ 6,400.00
Additional Sound Wall Thickness (From 8" to 12" Block X 160 ft.)	\$ 5,625.00
Sub-Total	\$ 185,650.00
14% Construction Engineering and Administration	\$ 25,991.00
<b>TOTAL ESTIMATED COSTS</b>	<b>\$ 211,641.00</b>

APPROVAL OF THE CITY OF GLENDALE

I have reviewed the above referenced proposed Intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and CITY OF GLENDALE and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 10<sup>th</sup> day of November, 2004.

  
\_\_\_\_\_  
City Attorney

RESOLUTION NO. 3805 NEW SERIES

ELAINE M. SCRUGGS  
MAYOR

ATTEST:

PAMELA HANNA  
City Clerk

STATE OF ARIZONA )  
County of Maricopa ) ss  
City of Glendale )

(SEAL)

APPROVED AS TO FORM:

CRAIG TINDALL  
Acting City Attorney

I, the undersigned, Pamela Hanna, being the duly qualified City Clerk of the City of Glendale, Maricopa County, Arizona, certify that the foregoing Resolution No. 3805 New Series is a true, correct and accurate copy of Resolution No. 3805 New Series, passed and adopted at a regular meeting of the Council of the City of Glendale, held on the 9th day of November, 2004, at which a quorum was present and voted in favor of said Resolution.

REVIEWED BY:

Given under my hand and seal this 17th day of November, 2004.

PAM KAVANAUGH  
Assistant City Manager

  
CITY CLERK

RESOLUTION NO. 3805 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR CONSTRUCTION OF A NOISE WALL ADJACENT TO THE LOOP 101 BETWEEN 67<sup>TH</sup> AND 59<sup>TH</sup> AVENUES.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

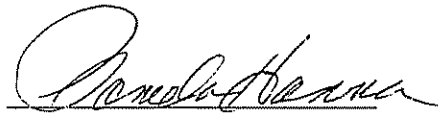
SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation (**JPA 04-090**) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.


PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 9<sup>th</sup> day of November, 2004.

  
MAYOR

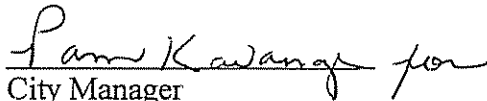
ATTEST:

  
City Clerk (SEAL)

APPROVED AS TO FORM:

  
City Attorney

REVIEWED BY:

  
City Manager





OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD  
ATTORNEY GENERAL

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1356TRN (**JPA 04-090**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 29, 2004

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", written over a horizontal line.

Susan E. Davis  
Assistant Attorney General  
Transportation Section